



7020-02

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1132]

**Certain Motorized Vehicles
and Components Thereof; Commission Final Determination Finding a Violation of Section
337;
Issuance of a Limited Exclusion Order and a Cease and Desist Order;
Termination of the Investigation**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found a violation of section 337 of the Tariff Act of 1930 (“section 337”), as amended, in this investigation. The Commission has issued a limited exclusion order (“LEO”) prohibiting the importation by respondents Mahindra & Mahindra Ltd. (“M&M”) of Mumbai, India and Mahindra Automotive North America, Inc. (“MANA”) of Auburn Hills, Michigan (collectively, “Respondents”) of certain motorized vehicles and components thereof that infringe complainant’s asserted trade dress. The Commission has also issued cease and desist orders (“CDOs”) directed to respondents M&M and MANA. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708-4716. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS)

at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on September 13, 2018, based on a complaint, as amended, filed by FCA US LLC of Auburn Hills, Michigan ("Complainant"). *See* 83 *Fed. Reg.* 46517 (Sept. 13, 2018). The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain motorized vehicles and components thereof by reason of: (1) infringement of U.S. Trademark Registration Nos. 4,272,873; 2,862,487; 2,161,779; 2,794,553; and 4,043,984 (collectively, "the registered trademarks"); (2) trademark dilution and unfair competition in violating the complainant's common law trademark rights; and (3) trade dress infringement. *See id.* The notice of investigation names M&M and MANA as respondents in this investigation. *See id.* The Office of Unfair Import Investigations is also a party to this investigation. *See id.*

On November 8, 2019, the ALJ issued the FID finding a violation of section 337. Specifically, the FID finds that Respondents' Roxor vehicle infringes Complainant's Jeep trade dress but not its registered trademarks. The FID also finds that the domestic industry requirement is satisfied with respect to both claims. The RD recommends that the Commission issue an LEO barring entry of Respondents' articles that infringe the asserted trade dress and CDOs against Respondents. In addition, the RD recommends that the Commission set a bond during the period of Presidential review at ten (10) percent on unassembled Roxor components or one (1) percent on the finished Roxor vehicle.

On December 9, 2019, the private parties also filed statements on the public interest pursuant to Commission Rule 210.50. On December 6, 2019, members of the public, including Prime Mold, AdventureVet, Milton Manufacturing, and Midwest Manufacturing LLC, also filed written submissions in response to the Federal Register notice requesting public interest comments. *See* 84 *Fed. Reg.* 63890 (Nov. 19, 2019).

On January 22, 2020, the Commission issued a notice determining to review the FID in part. *See* 85 *Fed. Reg.* 5035 (Jan. 22, 2020). The Commission's notice also requested written submissions on remedy, the public interest, and bonding. On February 7, 2020, the parties, including OUII, filed written submissions in response to the notice, and on February 14, 2020, the parties filed responses thereto.

Having examined the record of this investigation, including the FID, the RD, and the parties' and non-parties' submissions, the Commission has determined to affirm with modification the FID's determination of a violation of section 337. Specifically, as explained in the Commission Opinion filed concurrently herewith, the Commission has determined to affirm with modification the FID's findings with respect to the issues under review, *i.e.*: (1) validity, infringement, and importation in connection with Complainant's trade dress infringement claim; and (2) non-infringement and domestic industry with respect to Complainant's claim of infringement of its registered trademarks. All findings in the FID that are not inconsistent with the Commission's determination are affirmed.

Accordingly, the Commission finds that there is a violation of section 337 with respect to Complainant's trade dress infringement claim. The Commission has determined that the appropriate remedy is an LEO against Respondents' infringing products, and CDOs against respondents M&M and MANA. The Commission has also determined that the public interest

factors enumerated in subsections 337(d)(1) and (f)(1) (19 U.S.C. 1337(d)(1), (f)(1)) do not preclude the issuance of the LEO and CDOs. The Commission has further determined to set a bond during the period of Presidential review at ten (10) percent on unassembled Roxor components or one hundred (100) percent on the finished Roxor vehicle (19 U.S.C. 1337(j)).

The Commission's orders and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: June 11, 2020.

Lisa Barton,
Secretary to the Commission.

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